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April 8, 2008

The Honorable Michael Mukasey
Attorney General
The Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Attorney General Mukasey:

We are writing in response to current reports that a career attorney at the Justice Department may have been removed from her position based on rumors of her sexual orientation. Leslie Hagen served as the liaison between the Department and the U.S. Attorneys' Committee on Native American issues from 2005 to 2006. According to a report on National Public Radio, several people interviewed by the Inspector General's staff believe that the Department's decision to remove Ms. Hagen was due to her perceived sexual orientation.

The Department reportedly claimed a need to rotate people through the position as the reason for not renewing Ms. Hagen's contract. However, senior officials in Ms. Hagen's former office dispute this explanation, telling NPR that they learned in a meeting that her contract would not be renewed because "someone on the Attorney General's staff had a problem with Hagen. The problem, it was suggested during the conversation, was sexual orientation – or what was rumored to be Hagen's sexual orientation."

Ms. Hagen was removed from her post despite glowing reviews of her work. Former U.S. Attorney Tom Heffelfinger told NPR that "she was the best qualified person in the nation to fill that job." Sarah Brubaker, a tribal prosecutor in Michigan described Hagen as "at the very top of any of the prosecutors I've ever worked with" and "not only an excellent prosecutor, but also easy to work with – personable, professional." Several months after she was told that she would be removed, Ms. Hagen received the best possible rating of "outstanding" on all categories of her job performance evaluation.

We expect that the circumstances of Ms. Hagen's termination are part of the investigation into improper personnel practices at the Justice Department. Current law provides that it is a "prohibited personnel practice" to discriminate against a federal employee or job applicant on the basis of off-duty conduct that does not affect job performance. *See* 5 U.S.C. §2302(b)(10).

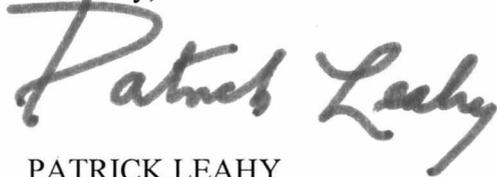
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Even though the statute does not specifically mention sexual orientation, it has long been interpreted to prohibit such discrimination, including, notably, in a 1983 opinion from the Justice Department's Office of Legal Counsel by then-Assistant Attorney General Theodore Olson. *See* 7 Op.O.L.C. 58 (1983).

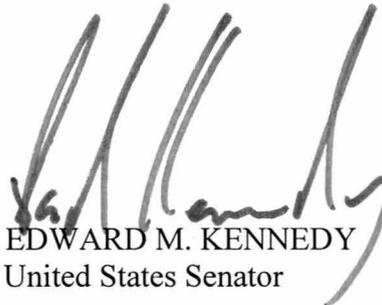
By all reports Ms. Hagen was an excellent prosecutor and an asset to her division. It would be shameful for the Department to terminate any employee because of sexual orientation, much less an employee whose job performance earned such high praise

We appreciate the commitment you made at your confirmation hearing to equal treatment for Justice Department employees, regardless of their sexual orientation. We also applaud your February 2008 statement which noted your efforts to "foster an environment in which diversity is valued, understood and sought" and maintain "an environment that's free of discrimination." We ask that as Attorney General, you take steps to ensure that all of your managers understand the existing legal protections to protect employees against all forms of discrimination and intimidation.

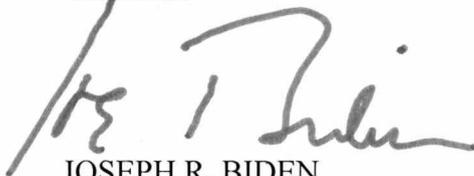
Sincerely,



PATRICK LEAHY
Chairman



EDWARD M. KENNEDY
United States Senator



JOSEPH R. BIDEN
United States Senator



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United States Senator



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